

# TERAJU

Jurnal Syariah dan Hukum

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STAIN SULTAN ABDURRAHMAN KEPULAUAN RIAU

TERAJU: Jurnal  
Syariah dan Hukum

Volume  
7

Nomor  
02

Halaman  
151 - 137

Bintan  
September 2025

E-ISSN 2715-386X  
P-ISSN 2715-3878

# TERAJU

Jurnal Syariah dan Hukum

**Teraju:** Jurnal Syariah dan Hukum, hadir dengan edisi perdana pada Maret 2019. Dalam Kamus Besar Bahasa Indonesia (KBBI), kata "**Teraju**" memiliki beberapa makna yang satu diantaranya berarti "timbangan" atau "neraca". Kehadiran **Teraju** tak lain ingin membawa pesan sebagaimana nilai yang termuat dalam namanya, yakni timbangan yang menggunakan dua buah piringan yang digantungkan dengan rantai (tali) pada kedua ujung lengannya yang merupakan identitas syariah dan hukum di berbagai belahan dunia.

Keberadaan **Teraju:** Jurnal Syariah dan Hukum, sebagai jurnal ilmiah dan media komunikasi ilmiah dengan fokus kajian pada ilmu syariah dan ilmu hukum. Jurnal ini diterbitkan dua kali dalam setahun, yakni pada Maret dan September oleh **P3M dan Jurusan Syariah dan Ekonomi Bisnis Islam STAIN Sultan Abdurrahman Kepulauan Riau** dengan **ISSN Online 2715-386X** dan **ISSN Print 2715-3878**. Berdasarkan Surat Keputusan Direktur Jenderal Pendidikan Tinggi, Riset, dan Teknologi Nomor 204/E/KPT/2022, tanggal 03 Oktober 2022 tentang Tingkat Akreditasi Jurnal Ilmiah Periode II Tahun 2022, **Teraju:** Jurnal Syariah dan Hukum **terakreditasi SINTA 5**. **Teraju** mengundang para peminat, pengkaji, peneliti, dan akademisi untuk mempublikasikan hasil penelitian dan karyanya yang berhubungan dengan ilmu syariah dan hukum di jurnal ini.

## Focus and Scope

**TERAJU: Jurnal Syariah dan Hukum** merupakan Jurnal Ilmiah yang memiliki **focus** pada kajian **Syariah dan Hukum**. Sedangkan **scope** dalam Jurnal ini meliputi:

- **Syariah:** Usul Fikih, Fikih, Hukum Ekonomi Syariah, Hukum Keluarga Islam, Perbandingan Mazhab, dan Ilmu Falaq.
- **Hukum:** Filsafat Hukum, Hukum Bisnis, Hukum Pidana, Hukum Perdata, Hukum Tata Negara, Hukum Adat, Hukum Internasional dan Studi Perbandingan Hukum.

## Pimpinan Redaksi :

M. Taufiq (SINTA ID : 6692134, ORCID iD: 0000-0002-1417-1316, STAIN Sultan Abdurrahman Kepulauan Riau)

## Penyunting/Editor:

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- Asrizal (SINTA ID : 6135029, STAIN Sultan Abdurrahman Kepulauan Riau)
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- Mohamad Tedy Rahardi (SINTA ID : 6716666, STAIN Sultan Abdurrahman Kepulauan Riau)

## Redaktur/Reviewers:

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- Riza Multazam Luthfy (SINTA ID: 6730766, UIN Sunan Ampel Surabaya)

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# TERAJU

Jurnal Syariah dan Hukum

Teraju: Jurnal Syariah dan Hukum

Volume 07 Issue 01, March 2025

DOI: <https://doi.org/10.35961/teraju.v7i02.1752>

## Islamic Legal References: Consensus and Disagreed-Upon Evidence

*Muhammad Rifal Sabri*

UIN Imam Bonjol Padang, Indonesia  
[2420070011@uinib.ac.id](mailto:2420070011@uinib.ac.id)

*Zulfan*

UIN Imam Bonjol Padang, Indonesia  
[zulfan@uinib.ac.id](mailto:zulfan@uinib.ac.id)

*Erman*

UIN Imam Bonjol Padang, Indonesia  
[erman@uinib.ac.id](mailto:erman@uinib.ac.id)

*Muhammad Fauzi*

UIN Imam Bonjol Padang, Indonesia  
[fauzi@uinib.ac.id](mailto:fauzi@uinib.ac.id)

### Abstrak

Artikel ini menguraikan Sumber Hukum didalam islam, dan dalil-dalil hukum dalam Islam, baik itu yang disepakati (Muttafaq) ataupun dalil yang di perselisihkan (Mukhtalif). Sebagai umat beragama, kita seharusnya mematuhi hukum yang tercermin dalam ajaran agama, sebagaimana Islam juga memiliki aturan dan hukum yang wajib dipatuhi oleh umatnya. Sumber hukum dalam Islam adalah Al-Qur'an dan Sunnah, yang merupakan kalam Allah dan wahyu dari Nabi yang menjadi dasar ajaran Islam. Metode yang penulis gunakan adalah metode kualitatif dan jenis penelitian yang digunakan adalah jenis penelitian kepustakaan (Library Research). Alasan pengambilan judul, untuk melihat sumber hukum utama didalam islam dan melihat kehujjahan setiap hukum-hukum yang ada di dalam islam. Hasil penelitian ini menunjukkan pemahaman kedua sumber hukum ini sangat penting karena keduanya saling terkait dalam menjelaskan hukum-hukum yang berlaku dalam Islam. Oleh karena itu, pemahaman yang benar mengenai keduanya harus menjadi prioritas utama, karena kesalahan dalam memahami keduanya dapat merusak keabsahan sumber hukum itu sendiri. Dengan memahami Al-Qur'an dan Hadits, kita akan memperoleh petunjuk hukum yang sesuai dengan tuntunan syariat dan sunnah Nabi Muhammad SAW.

**Kata Kunci :** *Al-Qur'an, Muttafaq, Mukhtalif*

### Abstract

This article outlines the sources of law in Islam and the legal evidences in Islam, whether they are agreed upon (Muttafaq) or disputed (Mukhtalif). As followers of a religion, we should adhere to the laws reflected in its teachings, just as Islam also has rules and laws that its followers are obligated to observe. The sources of law in Islam are the Qur'an and the Sunnah, which are the word of Allah and the revelations of the Prophet, forming the foundation of Islamic teachings. The author employs a qualitative method, with the type of research used being library research. The reason for choosing this title is to examine the primary sources of law in Islam and to assess the validity (hujjah) of each legal provision in Islam. The results of this study show that understanding these two sources of law is crucial because they are interrelated in explaining the legal provisions applicable in Islam. Therefore, having a correct understanding of both should be a top priority, as errors in understanding them can undermine the validity of the legal sources themselves. By understanding the Qur'an and Hadith, we will gain legal guidance in accordance with the teachings of Sharia and the Sunnah of Prophet Muhammad (peace be upon him).

**Keywords:** *Al-Qur'an, Muttafaq, Mukhtalif*



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Corresponding email: [2420070011@uinib.ac.id](mailto:2420070011@uinib.ac.id)

### Introduction

Every religious teaching has laws that bind its followers. In Islam, there are several sources of law that govern the behaviour of Muslims in fulfilling their roles as servants and vicegerents of Allah on earth. Islamic sources of law serve as the primary basis for making legal decisions. Therefore, all matters of dispute must be referred to these sources of law.

The first source of law is the Qur'an, which is the revelation or word of Allah that has been guaranteed to be authentic and free from human interference. With this protection, the Qur'an confirms its position as the primary source in Islam.

As the primary source, the Quran must be dynamic, true, and absolute. Dynamic means that the Quran can be

applied anywhere, anytime, and to anyone. The truth of the Quran can be proven by existing facts and realities. Additionally, the Quran's truth is unquestionable and cannot be refuted.

In its existence, the sources of law in Islam are not only derived from the Qur'an but also from Hadith, Ijma', and Qiyas (agreed-upon evidence), as well as disputed evidence such as *Istihsan*, *Istishab*, *'Urf*, *Maslahah Mursalah*, *Syar'u man Qablana*, *Sad-dzariyah*, and *Qoul Sahabat*. These sources function as secondary sources in Islamic law, not to perfect the Qur'an, but to enrich human understanding of the Maqasid As-Syari'ah. The Qur'an is perfect, while human understanding is imperfect, so explanations (bayan) are needed to clarify matters that are not yet well understood.

## Discussion

### The Qur'an and Hadith as Sources of Law in Islam

#### The Qur'an

Many scholars define the word "Al-Qur'an" etymologically as coming from the word *qara'a*, which can be interpreted as "reading" or "what is written on it." This word is taken from the *mashdar* form in the *fu'lan* pattern, which indicates the meaning of reading or something written.<sup>12</sup> An example can be found in the words of Allah SWT in QS Al-Qiyamah, verses 17-18.

﴿ إِنَّ عَلَيْنَا جَمْعَهُ وَقُرْآنَهُ ۗ ۱٧ فَاِذَا قَرَأَهُ فَاتَّبِعْ  
قُرْآنَهُ ۗ ۱٨ ﴾

From the *Luhowi* aspect, the word *qur'an* means "to collect and compile letters and words together in a neatly arranged speech." Scholars also define the *Qur'an* as defined by Ali bin Muhammad Al-Jurjani, that the *Qur'an* is:

الْقُرْآنُ هُوَ الْمُنَزَّلُ عَلَى الرَّسُولِ الْمَكْتُوبِ عَلَى  
الْمَصَاحِفِ الْمُنْفُورِ عَنْهُ نَقْلًا مَّتَوَاتِرًا اِبِلًا شُبُهَةً

Meaning: The *Qur'an* is the book revealed to the Prophet Muhammad, written in the *mushaf*, transmitted to us through a *mutawatir* chain of transmission, without any doubt.

<sup>1</sup> Idris Siregar, "The Quran and Hadith as Sources of Islamic Law," *Ibn Abbas* 6, no. 2 (2024): 190, <https://doi.org/10.51900/ias.v6i2.19767>.

<sup>2</sup> Rachmat Syafei, *Principles of Islamic Jurisprudence for UIN, STAIN, PTAIS* (Pustaka Setia, 2010), [http://elibrary.uinbanten.ac.id//index.php?p=show\\_detail&id=4762](http://elibrary.uinbanten.ac.id//index.php?p=show_detail&id=4762).

Therefore, it can be concluded that the *Quran* is the revelation of Allah's words conveyed by the angel *Jibril* to the Prophet Muhammad, peace be upon him, revealed gradually, transmitted through a chain of reliable narrators, in the form of a *mushaf*, and its recitation is considered an act of worship and is rewarded with blessings.

The laws contained in the *Quran* are of three kinds: *First*, the laws of belief, which are the laws concerning the obligations of those who are legally responsible to believe in Allah, His angels, His books, His messengers, and the Day of Judgment. *Second*, moral laws; that is, behaviour related to the obligations of the *mukallaf* to adorn themselves with noble qualities and to distance themselves from vices. *Third*, the laws of practice; that is, those related to speech, actions, contracts, and interactions (*muamalah*) among human beings. This third category is referred to as *fiqh Al-Qur'an*, and it is this that the science of *usul fiqh* seeks to achieve.<sup>3</sup>

#### Hadith

The term *Hadith* is the plural form of the word *Al-Hadith*, which means "new," synonymous with the word "*al-qadim*." The word *Al-Hadith* also has a linguistic meaning, namely *khobar* or stories, whether short or long.<sup>45</sup> In Arabic,

<sup>3</sup> Wahbah Al-Zuhaili, *Usbul Al-Fiqh Al-Islamiy*, 16th ed. (Damascus: Dar Al-Fikr, 2009), p. 420.

<sup>4</sup> Ibn Manzur, *Tabdzib Al-Lisan Al-Arab*, Vol. 2 (Beirut: Dar Al-kutub Al-Islamiyah, 1994), p. 560.

<sup>5</sup> Atina Nuzulia, "Sources of Islamic Law," *Angewandte Chemie International Edition*, 6(11), 951–952. 6, no. 2 (1967): 5–24.



known as the structural relationship. From the other perspective, Hadith functions as an explanation of the Quran, referred to as the functional relationship<sup>13</sup>.

Among the fundamental principles is the statement of Allah SWT in QS. Al-Hasyr verse 7

﴿ وَمَا آتَاكُمُ الرَّسُولُ فَخُذُوهُ وَمَا نَهَاكُمْ عَنْهُ فَانْتَهُوا ۗ ﴾

Meaning: Take what the Messenger gives you and refrain from what he forbids you. Fear Allah. Indeed, Allah's punishment is severe.

﴿ وَأَنْزَلْنَا إِلَيْكَ الذِّكْرَ لِتُبَيِّنَ لِلنَّاسِ مَا نُزِّلَ إِلَيْهِمْ وَلَعَلَّهُمْ يَتَفَكَّرُونَ ۗ ﴾

Meaning: We have revealed the Reminder (the Qur'an) to you so that you may explain to people what has been revealed to them and so that they may reflect.

﴿ وَمَا أَنْزَلْنَا عَلَيْكَ الْكِتَابَ إِلَّا لِتُبَيِّنَ لَهُمُ الَّذِي اخْتَلَفُوا فِيهِ وَرَحْمَةً لِّقَوْمٍ يُؤْمِنُونَ ۗ ﴾

Meaning: We have not sent down the Book (the Qur'an) to you (Prophet Muhammad) except to explain to them what they differ about and as guidance and mercy for those who believe.

### The Function of Hadith in Relation to the Qur'an

The function of Hadith in relation to the Quran, in terms of legal content, has three functions as follows.

- 1) Hadith serves as bayan (explanation), *takhsish* (specification), and *taqyid* (restriction) for verses that are still *mujmal* (general), *'am* (general), or *muthlaq* (unrestricted), i.e., verses of

the Qur'an whose implementation guidelines are not yet clear, such as when and how, are explained and elaborated in Hadith. For example, the general command to perform prayer is elaborated upon in the Sunnah. The Prophet Muhammad (peace be upon him) said:

- 2) Hadith serves to add laws that already have their foundational principles outlined in the Quran. This means that the Quran establishes the laws, while the Sunnah reinforces and supports them. For example, the command to establish prayer, pay zakat, and the prohibition of shirk, usury, and so on.
- 3) Hadith establishes laws that are not explicitly stated in the Quran.<sup>14</sup>

### The Quran and Hadith as Sources of Law in Islam

The Quran functions as a judge or arbiter that regulates the course of human life so that it runs straight. That is why when Muslims disagree in any matter, they should refer to the Quran. The Quran further plays the role of a controller and corrector of human life in the past. For example, the Children of Israel were corrected by Allah SWT. Additionally, the Quran is capable of resolving human problems from various aspects of life, including spiritual, physical, social, economic, and political, with wise solutions, as it was revealed by Allah SWT<sup>15</sup>.

<sup>14</sup> Muhammad Abu Zahrah, *Usbul Al-Fiqh* (Egypt: Dar Al-Fikr Al-'Arabiyy, n.d.), p. 112.

<sup>15</sup> Nasruddin Yusuf, "Hadith as a Source of Islamic Law (A Study of the Authenticity of Hadith as a Source of Law According to the Shafi'i School)," *Portrait of Thought* 19, no. 1 (2015), <https://doi.org/10.30984/pp.v19i1.714>.

<sup>13</sup> Dedeng Rosidin, "Law, Sources, and Evidence," *Islamic Sources of Law* 12 (2011): 1–129.

For every problem, the Quran provides an effective solution based on universal principles that can serve as a foundation for human actions and are also appropriate for the times. Thus, the Quran always remains relevant in every time and place, because Islam is an eternal religion. How fascinating is the statement by an expert that Islam is a complete system capable of addressing all aspects of life. It is a state and homeland or government and nation. It is morality and potential or mercy and justice. It is law or knowledge and decision. It is matter and wealth or income and welfare. It is jihad and da'wah or army and ideology. Similarly, it is true faith and valid worship.<sup>16</sup>

Regarding the status of Hadith as a source of Islamic teachings, it is based not only on the verses of the Quran and Hadith but also on the consensus of the Companions. The Companions agreed to establish the obligation to follow the Hadith of the Prophet Muhammad (peace be upon him). Scholars have agreed that Hadith can be used as evidence (reason) in determining laws. However, there are aspects that are *mutaba'ah* (to be followed), such as obedience and drawing closer to Allah (in matters of faith and worship), while there are also aspects that are *ghair muttaba'ah* (not to be followed), such as cultural practices (*jibiliyyah*) and those specific to the Prophet (*khushushiyah*). Examples of *jibiliyyah* include clothing styles, walking manners, preferred foods, and so on. Examples of *khushushiyah* include marrying more than four wives.<sup>17</sup>

<sup>16</sup> Moh Bahrudin, *The Science of Usul Fiqh, Journal of Chemical Information and Modeling*, 2019, p. 29.

<sup>17</sup> Bahrudin, p. 33.

The laws derived from the Sunnah must be obeyed just as the laws derived from the Quran must be obeyed, as stated in QS Ali-Imran: 32,

﴿ قُلْ أَطِيعُوا اللَّهَ وَالرَّسُولَ ۚ فَإِنْ تَوَلَّوْا فَإِنَّ اللَّهَ لَا يُحِبُّ الْكٰفِرِينَ ۝ ٣٢ ﴾

Meaning: Say (O Prophet Muhammad), “Obey Allah and the Messenger. If you turn away, then indeed Allah does not love the disbelievers.”

Then Surah An-Nisa verse 80

﴿ مَنْ يُطِيعِ الرَّسُولَ فَقَدْ أَطَاعَ اللَّهَ ۗ وَمَنْ تَوَلَّىٰ فَمَا أَرْسَلْنَاكَ عَلَيْهِمْ حَفِيظًا ۗ ۝ ٨٠ ﴾

Meaning: Whoever obeys the Messenger (Muhammad), has indeed obeyed Allah. Whoever turns away, We have not sent you (Prophet Muhammad) as a guardian over them.

### The agreed-upon evidences (*muttafaq*)

The majority of scholars have established that there are four agreed-upon evidences: the Qur'an, Hadith, Ijma' (consensus), and Qiyas (analogical reasoning). However, regarding the last two evidences, Ijma' and Qiyas, scholars differ in opinion, with some agreeing and others disagreeing.<sup>18</sup> This is what the founder of the Islamic Union, Ahmad Hassan, stated, who considered it difficult for Ijma' to occur after the era of the Companions.<sup>19</sup> Similarly, scholars from the Zahiri school of thought and Shiite

<sup>18</sup> Deden Ibnu Balya, “The Relevance of Ijma' and Qiyas in the Structure of Islamic Law and the Structure of Positive Law in Indonesia,” *Istinbath: Journal of Law* 16, no. 1 (July 1, 2019): 67–81, <https://doi.org/10.32332/istinbath.v16i1.1468>.

<sup>19</sup> Nawawi, *Principles of Islamic Jurisprudence: History, Linguistic Theory, and Maqasid Theory*, 2020.

scholars do not recognise Qiyas as an agreed-upon evidence.<sup>20</sup> As for the legal evidences agreed upon by the scholars, they include: the Quran, Hadith, Ijma', and Qiyas. The explanations regarding the Quran and Hadith have already been explained above, while the explanations regarding Ijma' and Qiyas are as follows:

### Ijma'

The term "*ijma*" is well known among Muslims, especially among Islamic legal scholars or fuqaha. In fact, this term was already known in Arab culture long before the advent of Islam.<sup>21</sup> In Islamic literature of the first and second centuries Hijri, the term "*ijma*" was widely used, but still in a non-technical sense.<sup>22</sup> The term began to crystallise into a technical-methodological meaning as differences of opinion within Islam became more pronounced. *Ijma'* emerged as a response to differences of opinion (*ikhtilaf*), so it is often said that *ijma'* and *ikhtilaf* are of the same age<sup>23</sup>.

Etymologically, the word "*ijma*" derives from the Arabic term *ajma'a* (اجمع), which carries meanings such as "to gather," "to unite," "to come together," "to unite," or "to draw together."<sup>24</sup> According to Abu Luwis Ma'luf, *ijma'* can be interpreted as "will" and "agreement" (al-'azm - al-ittifaq). The difference is that "will" is individual and can arise from one person, while "agreement" requires the participation of two or more people.

<sup>20</sup> Bahrudin, *The Science of Usul Fiqh*, p. 28.

<sup>21</sup> Ahmad Hasan, *Ijma'*, 1st edition (Bandung: Pustaka, 1985), p. 9.

<sup>22</sup> Hasan, p. 9.

<sup>23</sup> Bahrudin, *Science of the Principles of Islamic Jurisprudence*, p. 36.

<sup>24</sup> Ibn Mansur, *Lisanul Al-'Arab*, vol. VIII (Beirut: Dar Al-Beirut, 1956), p. 53.

Therefore, in the context of this dissertation, the term *Ijma'* is more appropriately understood as "agreement." In the Indonesian Dictionary, *ijma'* is defined as "the agreement of opinions (consensus) among scholars regarding a matter or event."<sup>25</sup>

An example of the use of the word *ijma'* with the meaning of "agreement" is found in the Arabic expression *اجمع القوم على كذا*, which means "the people have agreed on that." As for an example of the use of the word *Ijma'* in the sense of "will," in Q.S. Yunus [10]: 71, Allah swt. states:

﴿فَأَجْمِعُوا أَمْرَكُمْ﴾

Then make your decision (in resolving) your affairs

The Prophet Muhammad (peace be upon him) once said:

لَا صِيَامَ لِمَنْ لَمْ يُجْمِعِ الصِّيَامَ مِنَ اللَّيْلِ

Meaning: The fast of one who did not intend to fast from the night is not valid.

The Authority of *Ijma'*: Between Qath'i and Zhanni

The issue of the authority or validity of *Ijma'* is a central concern in studies of the concept or theory of *Ijma'*. This is because the core of the issue of *Ijma'* stems from the differing opinions of scholars regarding whether *Ijma'* can be used as a source of Islamic law (*al-adillah at-tasyri'iyah*). In this context, the question arises as to whether *Ijma'* can be used as evidence in the establishment of Islamic law. Additionally, regarding the validity of *Ijma'*, there is also the question of who

<sup>25</sup> Compilation Team of the Centre for Language Development and Promotion, *Kamus Besar Bahasa Indonesia*, 2nd Edition (Jakarta: Balai Pustaka, 1991), p. 367.

qualifies as a mujtahid and is competent to participate in the Ijma' process.<sup>26</sup>

Regarding the issue of the validity of Ijma', the opinions of scholars can generally be classified into two categories, as will be discussed below.

#### 1) Ijma' as a Source of Authority

Some scholars argue that ijma' is a valid source of law. This view is followed by the majority of scholars, such as al-Shafi'i, Ibn al-Humam, al-Jashshash, al-Ghazali, asy-Syathibi, as-Sarakhsi, Ibn Hazm, and a number of other contemporary scholars. This group bases their arguments supporting the validity of Ijma' on several verses of the Qur'an and the hadith of the Prophet SAW. One of them is the statement of Allah SWT in Surah an-Nisa' [4]: 59.

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ ۗ ٥٩ ﴾

Meaning: O you who have believed, obey Allah and obey the Messenger (Prophet Muhammad) and those in authority among you.

The meaning of the word "al-amr" in the above verse is synonymous with the word "al-sya'n," which means affairs or fields. This is general in nature, covering both religious and worldly affairs. In worldly affairs, those who have the authority to regulate them are heads of government such as kings, heads of state, or other similar leaders. In the religious domain, those authorised to regulate it are the scholars. Thus, the legal understanding that can be derived from the verse is that Muslims are obligated to obey those in

<sup>26</sup> Bahrudin, *The Science of Usul al-Fiqh*, p. 43.

authority if they have agreed on the law of an issue or have produced a consensus (ijma') based on the Quran and/or the Sunnah.<sup>27,28</sup>

#### 2) Ijma' is Not a Proof

Some other scholars argue that Ijma' is not evidence. This view is held by an-Nizham (from the Mu'tazilah school), as well as some groups of the Khawarij and Shi'ah.<sup>29</sup> They argue that Ijma' cannot be used as evidence, citing several reasons from the Quran, Sunnah, and logical arguments. One of the Quranic verses used as a basis for rejecting the validity of ijma' is Q.S. an-Nisa' [4]: 59.

﴿ يَا أَيُّهَا الَّذِينَ آمَنُوا أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولِي الْأَمْرِ مِنْكُمْ فَإِنْ تَنَازَعْتُمْ فِي شَيْءٍ فَرُدُّوهُ إِلَى اللَّهِ وَالرَّسُولِ ۗ ٥٩ ﴾

Meaning: O you who have believed, obey Allah and obey the Messenger (Prophet Muhammad) and those in authority among you. If you differ in anything, refer it to Allah and the Messenger (the Qur'an and Sunnah).

According to this group, based on this verse, if a dispute arises in a matter, the solution that must be taken is to refer to the Book of Allah and the Sunnah of the Prophet (peace be upon him). There is no command to refer to the consensus of the mujtahid scholars. This indicates that Ijma' (consensus of the mujtahid scholars) is not considered as evidence. Furthermore, in the dialogue between the Prophet (peace be upon him) and Mu'adz bin Jabal regarding the legal principles

<sup>27</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, p. 517.

<sup>28</sup> Bahrudin, *Science of Islamic Jurisprudence*, p. 44.

<sup>29</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, p. 434.

used in judicial decision-making, Ijma' was not mentioned, and the Prophet (peace be upon him) also agreed with this.

### The Quality of Ijma's Authority

As previously mentioned, there is a difference of opinion among scholars of *usul fiqh* regarding whether the validity of Ijma' stands on its own or requires supporting evidence. This difference of opinion then leads to a difference of opinion in determining the quality of the validity of Ijma', whether it is *qath'i* or *zhanni*. In this context, some scholars argue that since the theory of Ijma' is derived from the Quran and/or the Sunnah, it is generally considered that Ijma' is a definitive proof. Scholars who hold this view include Shairafi, Ibn Burhan, ad-Dabbusi, and Ibn Taimiyah.<sup>30</sup>

The above explanation shows that there are two categories of Ijma', namely Ijma' *qath'i* if supported by *qath'i nas* or related to matters that fall under the category of *'ulima min al-din bi al-dharurah*. Those who oppose such Ijma' are *kafir*. As for Ijma' of *zhanni* quality, which is Ijma' in matters supported by *zhanni* evidence or in matters not explicitly mentioned in the Sharia texts, those who oppose such Ijma' are not considered *kafir*.

### Types of Ijma'

Based on the process by which the agreement among the *mujtahids* is reached, Ijma' can be classified into two types: Ijma' *sharih* and *sukuti*. Both types of Ijma' and their status in the Islamic legal system will be explained below.

<sup>30</sup> Ali Abd Al-Raziq, *Al-Ijma' Fi Ayy-Syari'at Al-Islamiyyah* (Egypt: Dar Al-Fikr Al-'Arabiyy, n.d.), p. 91.

- 1) Ijma' *Sharib* or Ijma' *Qauli*, which is the consensus of *mujtahids* of their time regarding the ruling on a matter, where all *mujtahids* clearly express their opinions through words (*qaul*) or actions (*fi'l*).<sup>31</sup>
- 2) Ijma' *sukuti* or *ijma' rukhsab* is Ijma' based on an assumption, as its consensus is formed through the statements or actions of some scholars regarding the legal ruling of an issue. After this information spreads among the community, other scholars remain silent (*sukuti*) and do not express their opinions, even though sufficient time has passed for them to review it.<sup>32</sup>

### Qiyas

Qiyas, linguistically, means measuring something by something else that is comparable to it.<sup>33</sup> For example, measuring cloth or clothing with a metre. According to scholars of *usul fiqh*, *qiyas* is:

إثبات مثل حكم معلوم في معلوم آخر لإشترائهما في  
علة الحكم<sup>34</sup>

Meaning: equating the ruling of an event for which there is no explicit text with the ruling of another event for which there is an explicit text due to the similarity between the two events in their legal basis or reason.

<sup>31</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, p. 45.

<sup>32</sup> Abdul Wahab Khallaf, *The Science of the Principles of Islamic Jurisprudence*, 12th ed. (Cairo: Dar Al-Qalam, 1978), p. 448.

<sup>33</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, p. 571.

<sup>34</sup> Muhammad Al-Khudari Beik, *History of Islamic Legislation* (Indonesia: Maktabah Dar Ihya' al-Kutub al-'Arabiyyah, 1981), p. 289.

For example, the issue of drinking alcohol is an act whose ruling has been established in the text. Its ruling is haram based on QS Al-Maidah: 90, with the legal reason being that it is intoxicating. Therefore, any drink that contains the legal reason of being intoxicating has the same ruling as alcohol and is haram to drink<sup>35</sup>.

Every analogy consists of four elements as follows: (1) Al-Ashl, which is something whose ruling is found in the text. This element is usually called maqis 'alaih (the measure). (2) Al-far', which is something whose ruling is not found in the text and whose ruling is equated to al-ashl, also commonly called al maqis (the measured). (3) Hukm Al-Ashl; the legal ruling found in the text according to the al-ashl and used as the original ruling for the al-far'. (4) Shifat or 'illat; the specific condition used as the basis for the ruling of the ashl, after which the al-far' is equated with the ashl in terms of its ruling.<sup>36,37</sup>

### Qiyas as a basis for Ijma'

Scholars differ in opinion regarding whether qiyas can be used as a basis for ijma'. Among the scholars, some argue that qiyas is not valid as a basis for ijma' because ijma' is *qath'i* (definite), whereas the evidence for qiyas is *zhanni* (probable). According to the principle, what is *qath'i* cannot be based on what is *zhanni*. Those scholars who assert that qiyas is valid as a basis for ijma' argue that this is consistent with the opinion of the majority of

scholars, and also because qiyas is one of the sources of Islamic law, it is valid as a basis for ijma'.<sup>38</sup>

### Contested Evidence (Dalil-dalil Mukhtalaf)

In the science of usul fiqh, there is often discussion about the legal evidences of sharia that are not agreed upon by scholars. As the author has mentioned above, the evidences that are agreed upon by scholars include the Quran, Sunnah, Ijma', and Qiyas. Meanwhile, the evidence that is not agreed upon includes *Istihsan*, *Istishab*, *'Urf*, *Mashlahab Mursalah*, *Syar'u man Qablana*, *Sad-dzariah*, and *Qoul Sahabat*. As Muslims, we must know the Mukhtalaf (disagreed upon) legal arguments to equip ourselves in determining a law, whether in daily life we refer to these arguments or not. In other words, we must avoid any doubt regarding a law.<sup>39</sup> From the perspective of scholarly consensus, the sources of Islamic law are classified into three categories:

- 1) Muttafaq sources, which have been agreed upon by all scholars, namely the Quran and Hadith, and these are the primary sources of law in Islam.
- 2) Sources of law agreed upon by the majority (jumhur) of scholars, which occupy this position alongside the Quran and Hadith, are Ijma' and Qiyas.
- 3) Mukhtalaf sources (those disputed by scholars). These include *'Urf* (custom), *Istishhab* (legal reasoning based on past practice), *Istihsan* (presumption of legality), and *Mashlahab Mursalah* (legal

<sup>35</sup> Bahrudin, *The Science of Usul Fiqh*, p. 60.

<sup>36</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, p. 576.

<sup>37</sup> Bahrudin, *The Science of the Principles of Islamic Jurisprudence*, p. 61.

<sup>38</sup> Ali bin Muhammad Al-Bazdawi, *Ushul Al-Bazdawi* (Karachi: Jawid Press, n.d.), p. 88.

<sup>39</sup> Bahrudin, *Principles of Islamic Jurisprudence*, p. 62.

reasoning based on the principle of public interest).<sup>40</sup>

The following are the general arguments for Mukhtalaf that are disputed by scholars:

### Istihsan

Istihsan has become a serious debate among scholars of *usul fiqh*. In its literal sense, *istihsan* means to consider something good, while in technical terms, it refers to a mujtahid's shift from using explicit analogy (*qiyas jaly*) to implicit analogy (*qiyas kbafy*) or from general rules (*hukum kulli*) to exceptions (*bukum istitsna'*) due to the presence of evidence that logically justifies it.<sup>41</sup> According to other scholars of *usul fiqh*, *istihsan* is a proof derived from the reasoning of a mujtahid who establishes the preference of *kbafy* *qiyas* over *jaly* *qiyas*, or gives priority to specific legal provisions (*juz'*) over general provisions (*kully*).<sup>42</sup> Thus, *istihsan* is turning away from *qiyas kbafy* or from the general rule (*kulli*) towards the exception because there is a stronger evidence.

The forms of *istihsan* based on the supporting arguments can be divided into six, namely *istihsan* with *nash*, with *ijma'*, with *dharurah*, with *qiyas khafi*, with *'urf* or with *mashlahah*.<sup>43 44</sup>

a. *Istihsan bil qiyas Al-Kbafi*, which is the formulation of law through deep reflection and research on a case or

event that has two arguments, namely *qiyas jaly* and *qiyas kbafi*, and each argument has its own legal consequences.

- b. *Istihsan bin nash*, which is the permissibility of violating a universally established law that has become a general rule, because there is a specific text from the Quran or Sunnah that permits it.
- c. *Istihsan bil ijma'*, which is the fatwa of mujtahids on a law in contemporary issues that violates universal rules that have become general principles due to custom.
- d. *Istihsan bi Al-Dharurah*, which is an exception to an established law due to the difficulties that would arise if the law or ruling were applied.
- e. *Istihsan bi Al-Mashlahah*; this is a law that contradicts established general principles for the sake of the common good and safety.
- f. *Istihsan bi al-'urf*, which is the shift of a law or general rule that has been established due to the existence of a prevailing tradition.

An example of *istihsan* is that, in principle, Islamic law prohibits the conclusion of contracts and the sale and purchase of goods that do not exist at the time of the contract. However, *Islamic law* then grants a *dispensation*, permitting *salam*, which is a sale with payment in advance (down payment), while the goods are delivered later. Similarly, *Islamic law* permits *istishna'*, which involves ordering something to be made or purchasing it on credit.

<sup>40</sup> Bahrudin, p. 53.

<sup>41</sup> Mukhtar Yahya and Fathurrahman, *Fundamentals of Islamic Fiqh Law* (Bandung: Al-Ma'arif, 1986), p. 100.

<sup>42</sup> Ahmad Syafi'i Karim, *Fiqh Ushul Fiqh* (Bandung: Pustaka Setia, 2006), p. 80.

<sup>43</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, pp. 24–26.

<sup>44</sup> Bahrudin, *The Science of the Principles of Islamic Jurisprudence*, p. 63.

### ***Istishab***

In its linguistic sense, *istishab* means to carry or accompany. As stated by Al-Asnawy (d. 772H), he opined that the meaning of *istishab* is the establishment (application) of a law to a matter in the future based on the fact that the law was already in effect previously, as there is no reason requiring a change in the law. Or establishing a law beforehand, so that a new law can change it.<sup>45</sup>

From the above definition, a principle emerges:

الأصلُ بقاءُ ما كانَ على ما كانَ

Meaning: The fundamental principle is that the law of a matter remains as it was previously.

Many scholars explain that in the hierarchy of *ijtihad*, *istishhab* is the last reference or evidence for a *mujtahid* after he has not found evidence from the Qur'an, Sunnah, *Ijma'*, or *qiyas*. Al-Syaukani, for example, quotes the view of a scholar who says that *istishhab* is establishing or applying the existing law, as long as there is no evidence to change it.<sup>46</sup>

If a *mufti* is asked about an issue, he must first seek the ruling in the Quran, then in the Hadith, then in *Ijma'*, and finally in *qiyas*. If he does not find it there, he may establish the ruling by applying the previous ruling in the present (*Istishhab Al-Hal*). If he doubts the applicability of the ruling, the original principle is that the ruling remains in effect.

The scholars mention *Istishhab* in several types, among them:

- 1) The default legal ruling for something is to assume it is permissible (*mubah*) unless there is evidence to the contrary; that is, it is permissible if it is beneficial and prohibited if it causes harm. There is a well-known difference of opinion among scholars regarding the default legal ruling for something, namely whether it is permissible or prohibited. One example is the type of food and drink for which no evidence explaining its ruling is found in the Quran and Sunnah, or other evidence such as consensus (*ijma'*) and analogy (*qiyas*).
- 2) *Istishhab Al-bara'ah Al-Ashliyah*, or that the original ruling of a person is free from any obligation or responsibility until evidence or proof comes to impose an obligation or responsibility upon them.
- 3) *Istishhab* of the ruling established by *Ijma'* when faced with an issue that is still disputed.<sup>47</sup>

### ***Custom***

*Urf*, in its linguistic meaning, means "to know," and is used in the sense of something that is known, recognised, considered good, and accepted by sound reason. According to scholars of *usul fiqh*, '*urf* is something that has been customary among people, continuously practised over a long period of time, or there are words or terms that have been agreed to have a specific meaning and are not unfamiliar to them.<sup>48</sup> Based on its form, '*urf* has two types:

<sup>45</sup> Karim, *Fiqh Ushul Fiqh*, p. 82.

<sup>46</sup> Zahrah, *Principles of Islamic Jurisprudence*, p. 296.

<sup>47</sup> Karim, *Fiqh of the Principles of Islamic Jurisprudence*, p. 83.

<sup>48</sup> Al-Zuhaili, *Principles of Islamic Jurisprudence*, p. 104.

- 1) *Al-'urf Al-Qaliyah*, which refers to customs in the form of words, such as the word "*lahm*" (meat), which in this context does not include fish meat.
- 2) *Al-'urf Al-Fi'ly*, which refers to customs in the form of actions, such as buying and selling in society without uttering a formal contract of sale.<sup>49</sup>

The conditions for *'Urf* to be accepted as Islamic law include:

- a) There is no specific evidence for a particular issue in the Qur'an or Sunnah.
- b) Its use does not result in the neglect of Sharia law, including causing hardship, difficulty or restriction.
- c) It has been generally accepted, meaning it is not practised by only a few people.<sup>50</sup>

Furthermore, regarding the status or quality of *'urf* in the eyes of the Sharia, there are two types: *'urf shahih* (valid) and *'urf fasid* (invalid).<sup>51</sup>

- 1) *'Urf shahih* refers to actions performed by people that do not contradict the evidence of the Shari'ah, do not permit what is forbidden, or invalidate what is obligatory. Examples include trade by means of an indent or prior order, the payment of dowry in cash or on credit, the custom of the groom giving gifts to the bride outside of the dowry, and so on.
- 2) *'Urf fasid* refers to customs and traditions that contradict the

provisions of Islamic law. Examples include the custom of drinking alcoholic beverages during festive occasions, usurious practices among weak merchants to obtain capital, acquiring wealth through gambling, and so on.

Based on the above explanation, the validity of *'urf* can be understood, where scholars opine that only valid *'urf* can serve as a basis for mujtahids and judges to establish laws or decisions. Malikiyah scholars often establish laws based on the actions of the people of Medina. This means that what exists in society can be used as a source of law, provided it does not contradict Islamic law.

Imam al-Shafi'i is known for his *qaul qadim* and *qaul jadid*, as he observed differing practices in the societies of Baghdad and Egypt. However, *'urf fasid* is not acceptable, as it clearly contradicts both the text and the general principles of the text.

### ***Mashlahah Mursalah***

Mashlahah mursalah consists of two words: *mashlahat* and *mursalah*. Etymologically, *mashlahah* means the effort to obtain benefits and eliminate harm/*madharat*. From this, it can be understood that *mashlahah* has two terms: the presence of benefits (positive) and the avoidance of harm (negative). Sometimes *mashlahah* is viewed from the aspect of *ijab* alone and becomes a *qorinah* to eliminate *mafsadat*. As fuqaha argue, "eliminating *mafsadat* takes precedence over establishing *maslahat*."<sup>52</sup>

<sup>49</sup> Bahrudin, *Science of the Principles of Islamic Jurisprudence*, p. 67.

<sup>50</sup> Karim, *Fiqh Ushul Fiqh*, p. 86.

<sup>51</sup> Fathurrahman, *Foundations of Islamic Fiqh Law*, p. 110.

<sup>52</sup> Karim, *Fiqh Ushul Fiqh*, p. 84.

As previously explained, *mashlahah* is the core of every sharia revealed by Allah SWT to humans to preserve the objectives of sharia (*maqashid alshari'ah*). The term "mursalah" is understood as something absolute and unrestricted, i.e., *maslahah* that is not specifically outlined in the text or subject to any command or prohibition. In the absence of such contextual evidence, *maslahah* can serve as a reference in determining a legal ruling.

The conditions for *mashalih al-mursalah* according to Imam al-Syathibi are three (3):

- a) Rational. When *mashalihul mursalah* is presented to reason, reason can accept it. With this condition, matters of principle (*ibadah*) do not fall under *mashlahah mursalah*.
- b) Consistent or synergistic with the objectives of Sharia law
- c) Preserving fundamental principles (*dharuri*) to eliminate hardship (*raf'ul haraj*).<sup>53</sup>

Regarding the validity of *mashalih al-mursalah*, the majority of scholars opine that *mashlahah mursalah* is a legal argument that can serve as the basis for the formation of law, and that events not covered by textual evidence (*nash*), consensus (*ijma'*), analogy (*qiyas*), or exception (*istisna*), are subject to the law desired by the public interest. The establishment of law based on public interest must not be postponed until there is evidence of recognition from the Shari'ah.<sup>54</sup> However, there are also

scholars who reject the validity of *mashlahah mursalah*, including the *Zahiriyah*, *Shi'ah*, *Shafi'iyah*, and Ibn Hajib from the Maliki school.<sup>55</sup>, and they argue that *mashlahah mursalah* lacks legal evidence to prove its recognition or rejection by the Shariah, and therefore cannot serve as a basis for the formation of law.

Regarding the validity of *mashlahah al-mursalah*, in principle, the majority of scholars accept it as one of the reasons for establishing Sharia law, although they differ in their application and placement of conditions. Hanafi scholars state that for *mashlahah al-mursalah* to serve as evidence, it must have an impact on the law. This means that there must be a verse, hadith, or consensus indicating that the characteristic considered as *mashlahah* is the *'illat* (legal motive) in the establishment of a law, or that the type of characteristic serving as the legal motive is used by the text as the motive for a law. Malikiyah and Hanabilah scholars accept *mashlahah mursalah* as evidence in establishing legal rulings, and they are considered the most prolific and extensive scholars in applying it.

### ***Syar'u Man Qablana***

*Syar'u man qablana* refers to the sharia brought by the previous prophets before the advent of Prophet Muhammad, which served as guidance for their people, such as the sharia of Prophet Ibrahim, the sharia of Prophet Musa, the sharia of Prophet Daud, the sharia of Prophet Isa, and others. The Sharia established by Allah SWT for previous nations shares the same foundational principles as the Sharia

<sup>53</sup> Zahrah, *Principles of Islamic Jurisprudence*, p. 279-280.

<sup>54</sup> Fathurrahman, *Foundations of the Development of Islamic Fiqh Law*, p. 117.

<sup>55</sup> Al-Zuhaili, *Principles of Islamic Fiqh*, vol. 2, p. 40.

established for the nation of Muhammad SAW, as stated in the words of Allah SWT:

﴿ شَرَعَ لَكُمْ مِنَ الدِّينِ مَا وَصَّى بِهِ نُوحًا  
وَالَّذِي أَوْحَيْنَا إِلَيْكَ وَمَا وَصَّيْنَا بِهِ إِبْرَاهِيمَ  
وَمُوسَى وَعِيسَى أَنْ أَقِيمُوا الدِّينَ وَلَا تَتَفَرَّقُوا  
فِيهِ كَبُرَ عَلَى الْمُشْرِكِينَ مَا تَدْعُوهُمْ إِلَيْهِ اللَّهُ  
يَجْتَبِي إِلَيْهِ مَنْ يَشَاءُ وَيَهْدِي إِلَيْهِ مَنْ يُنِيبُ ۝ ١٣ ﴾

Meaning: He (Allah) has prescribed for you the religion which He enjoined upon Noah, and which We have revealed to you, and which We enjoined upon Abraham, Moses, and Jesus, saying: "Establish the religion (faith and piety) and do not divide yourselves therein. It is very difficult for the polytheists to follow the religion you call them to. Allah chooses whom He wills for His religion and guides to His religion those who turn to Him.

Among these common principles are those related to the concept of God, the Hereafter, destiny and predestination, God's promises and threats, and so on. Regarding the details, some are the same and some are different, depending on the circumstances, time, and place. In addition, there are also the laws of the previous communities that share the same name but differ in their implementation from the laws of Prophet Muhammad, such as fasting mentioned in Surah Al-Ma'idah [5:32].

﴿ مِنْ أَجْلِ ذَلِكَ كَتَبْنَا عَلَى بَنِي إِسْرَائِيلَ أَنَّهُ  
مَنْ قَتَلَ نَفْسًا بِغَيْرِ نَفْسٍ أَوْ فَسَادٍ فِي الْأَرْضِ  
فَكَأَنَّمَا قَتَلَ النَّاسَ جَمِيعًا وَمَنْ أَحْيَاهَا فَكَأَنَّمَا  
أَحْيَا النَّاسَ جَمِيعًا وَلَقَدْ جَاءَتْهُمْ رُسُلُنَا بِالْبَيِّنَاتِ  
ثُمَّ إِنَّ كَثِيرًا مِّنْهُمْ بَعَدَ ذَلِكَ فِي الْأَرْضِ  
لَمُسْرِفُونَ ۝ ٣٢ ﴾

There are three types of syar'u man qablana:

- The Sharia intended for the people before us, but the Quran and Hadith do not mention it, either to abolish it or to make it applicable to the followers of Prophet Muhammad (peace be upon him).
- The Sharia intended for the communities before us, which was later declared invalid for the community of Prophet Muhammad (peace be upon him).
- Shari'ah intended for the communities before us, which the Quran and Hadith explain to us. Regarding the third form, namely Shari'ah intended for the communities before us, which is explained to us by the Quran and Hadith, the scholars differ in opinion. Some Hanafi scholars, some Maliki scholars, some Shafi'i scholars, and some Hanbali scholars hold the view that such Sharia also ceases to apply to the community of Muhammad, peace be upon him.<sup>56</sup>

Therefore, Hanafi scholars hold that killing a dhimmi is equivalent to killing a Muslim. They base this ruling on Quranic verse 5:45:

﴿ وَكَتَبْنَا عَلَيْهِمْ فِيهَا أَنَّ النَّفْسَ بِالنَّفْسِ وَالْعَيْنَ  
بِالْعَيْنِ وَالْأَنْفَ بِالْأَنْفِ وَالْأُذُنَ بِالْأُذُنِ وَالسِّنَّ  
بِالسِّنِّ وَالْجُرُوحَ قِصَاصٌ فَمَنْ تَصَدَّقَ بِهِ فَهُوَ  
كَفَّارَةٌ لَهُ وَمَنْ لَّمْ يَحْكَمْ بِمَا أَنْزَلَ اللَّهُ فَأُولَئِكَ هُمُ  
الظَّالِمُونَ ۝ ٤٥ ﴾

Meaning: We have decreed for them (the Children of Israel) therein (in the Torah) that life is to be repaid with life, eye for

<sup>56</sup> Fathurrahman, *Foundations of Islamic Fiqh Law*, p. 116.

eye, nose for nose, ear for ear, tooth for tooth, and wounds (also) are to be avenged. Whoever forgives (the right of retribution), it becomes an expiation for him. Whoever does not judge according to what Allah has revealed, they are the wrongdoers.

As for the opinion of another group, according to them, with the advent of the Sharia of Prophet Muhammad (peace be upon him), the previous Sharia is deemed abrogated or no longer applicable. Regarding the second form, scholars do not consider it as a basis for evidence, while for the first, scholars who consider it as evidence do so as long as it does not contradict the Sharia of Prophet Muhammad (peace be upon him).

### ***Sadd Al-Dzari'ah***

*Sadd Al-Dzari'ah* consists of two matters: *sadd* and *dzari'ah*. *Sadd* means an obstacle, hindrance, or blockage, while *dzari'ah* means a path or means. The purpose is to hinder, obstruct, or block all paths leading to corruption or sin.

The purpose of establishing Sharia law through *Sadd Al-Dzari'ah* is to facilitate the achievement of public interest or to minimise the likelihood of corruption or to prevent oneself from committing sinful acts. This aligns with the general purpose of Sharia in establishing commands, whether they can be carried out directly or indirectly; all require prior action.<sup>57</sup>

The principle is as follows:  
مَا لَا يَنْبَغُ الْوَأَجِبُ إِلَّا بِهِ فَهُوَ وَاجِبٌ

<sup>57</sup> Zahrah, *Principles of Islamic Jurisprudence*, p. 288.

Meaning: Something that is necessary to perfect an obligatory act is also obligatory.

For example, one of the obligations in Islam is to perform the five daily prayers. In order for someone to perform the prayer correctly, they must first learn how to do it. Without learning, they will not be able to perform the prayer properly. Although at first glance learning to pray may seem non-obligatory, since it determines the ability to perform the obligation of prayer, learning to pray also becomes obligatory, just like the obligation of prayer itself.

The legal basis for *sadd al-dzari'ah* is the Quran and Hadith, including the words of Allah SWT in Surah Al-'An'am verse 108:

﴿ وَلَا تَسُبُّوا الَّذِينَ يَدْعُونَ مِنْ دُونِ اللَّهِ فَيَسُبُّوا اللَّهَ عَدْوًا بِغَيْرِ عِلْمٍ كَذَلِكَ زَيَّنَّا لِكُلِّ أُمَّةٍ عَمَلَهُمْ ثُمَّ إِلَىٰ رَبِّهِمْ مَرْجِعُهُمْ فَيُنَبِّئُهُمْ بِمَا كَانُوا يَعْمَلُونَ ﴿١٠٨﴾

Meaning: Do not revile those whom they invoke besides Allah, lest they revile Allah out of ignorance. Thus, We have adorned the deeds of every people in their own eyes. Then to their Lord is their return, and He will inform them of what they used to do.

Idols are not forbidden to be reviled by Allah SWT, but this verse teaches Muslims not to insult or revile idols. This prohibition is intended to avoid retaliation from polytheists who may revile Allah SWT excessively.

In another verse, Allah SWT states in Surah An-Nur, verse 31:

﴿ وَلَا يَضْرِبْنَ بَأْسَ جُلُودٍ لِيُعْلَمَ مَا يُخْفِينَ مِنْ زِينَتِهِنَّ ﴾

Meaning: And let them not stamp their feet to make known what they hide of their adornment.

Women stamp their feet so that the sound of their ankle bracelets can be heard, and this action attracts the hearts of other men to invite them to commit adultery. Therefore, this action is prohibited as an effort to close the door leading to adultery. The Prophet Muhammad SAW said, "Know that the prohibitions of Allah are the actions that He has forbidden. Whoever grazes his livestock near such prohibitions will inevitably fall into them." (Reported by Bukhari and Muslim).

This hadith explains that committing an act that can lead to sin is more likely to result in committing that sin than it is to prevent oneself from committing it. The safest course of action is to prohibit acts that lead to sin.

Regarding the object of *sadd al-dzari'ah*, it can be explained that actions that lead to prohibited actions sometimes inevitably result in the commission of those prohibited actions, but sometimes they only have the potential to result in the commission of those prohibited actions.

In the first category, there is no issue, and the act is clearly prohibited, just as the act itself is prohibited. The second category is actually the object of *sadd al-dzari'ah*, because the act often determines how far it pushes the perpetrator to commit the sinful act.

Regarding this matter, there are three possibilities:

- a. The likelihood that the act causes the commission of the prohibited act (*dzari'ah qawiyah*, i.e., the strong path)

- b. The second possibility is that the act has a weak likelihood of leading to the commission of the prohibited act (*dzari'ah dha'if*, i.e., a weak means).
- c. An equal likelihood of the forbidden act being committed or not (*dzari'ah dha'if*, i.e., a weak means).

### **Qoul Shahaby**

During the Prophet's lifetime, all legal issues that arose in society were directly asked by the Companions to the Prophet, who provided answers and solutions. However, after the Prophet Muhammad (peace be upon him) passed away, the companions who were experts in deriving legal rulings made sincere efforts to resolve these issues, so that Muslims could act in accordance with the fatwas of the companions. These fatwas of the Companions were then narrated by the *tabi'in*, *tabi'it-tabi'in*, and those who came after them, such as the hadith narrators. The opinions of scholars regarding the statements of the Companions can be explained as follows: there are two types of statements from the Companions that can be used as evidence:

- 1) The opinion of the Companion that is strongly believed to actually originate from the Prophet Muhammad, because the mind cannot or has not yet reached it, such as the statement of Aisha:

لَا يَمْكُتُ الْحَمْلُ فِي بَطْنِ أُمِّهِ أَكْثَرَ مِنْ سَنَتَيْنِ قَدَرِ مَا  
يَتَحَوَّلُ ظِلُّ الْمَعْرَلِ

Aisha's explanation that the maximum gestation period is two years, not a day less, is not merely the result of Aisha's own *ijtihad*, but rather originates from the Prophet Muhammad, even

though it appears to be Aisha's own words and opinion.

- 2) The opinion of a Companion that is not opposed by any other Companion, such as the opinion that a grandmother receives one-sixth (1/6) of the inheritance, as stated by Abu Bakr and not opposed by any other Companion.<sup>58</sup>

Opinions not agreed upon by other companions cannot be used as evidence; this view is adopted by the Hanafī, Maliki, Hanbali, and some Shafi'i schools and is given precedence over analogy. Even Ahmad bin Hanbal prioritises the statement of the Companion over mursal hadith and weak hadith. Al-Syaukani considers the opinion of the Companion to be like the opinions of other mujtahids, and it is not obligatory for Muslims to follow it.

### Conclusion

The Qur'an and Hadith are highly relevant and interconnected sources of law, and they will continue to exist while maintaining their authenticity. The existence of Hadith will always align with the existence of the Qur'an. Sources of law in Islam are not only derived from the Qur'an but also from Hadith, Ijma', and Qiyas (agreed-upon evidence), as well as disputed evidence such as *Istihsan*, *Istisbab*, *'Urf*, *Maslahah Mursalah*, *Syar'u man Qablana*, *Sad-dzari'ah*, and *Qoul Sahabat*. These sources function as secondary sources in Islamic law, not to perfect the Quran, but to enrich human understanding of the objectives of Islamic law (Maqasid As-Syari'ah).

<sup>58</sup> Fathurrahman, *Foundations of Islamic Fiqh Law*, pp. 94-95.

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